

FILED
GREAT FALLS

IN THE UNITED STATES DISTRICT COURT

2012 OCT 9 PM 3:50

FOR THE DISTRICT OF MONTANA

PATRICK E. BUFFY, CLERK
BY _____

GREAT FALLS DIVISION

DEPUTY CLERK

UNITED STATES OF AMERICA,

Cause No. CR 09-42-GF-SEH
CV 12-75-GF-SEH

Plaintiff/Respondent,

vs.

ORDER DISMISSING MOTION AND
DENYING CERTIFICATE OF
APPEALABILITY

BEVERLY PAULINE
IRON PIPE-BEGAY,

Defendant/Movant.

On September 10, 2012, Defendant Beverly Pauline Iron Pipe-Begay, acting through “substituted counsel” Thane Johnson, filed a motion to vacate, set aside, or correct her sentence under 28 U.S.C. § 2255. Represented by Assistant Federal Defender R. Hank Brandom, Iron Pipe-Begay currently has an appeal pending before the Ninth Circuit Court of Appeals. Notice of Appeal (doc. 61); *United States v. Iron Pipe-Begay*, No. 12-30266 (9th Cir. filed Aug. 24, 2012).

District courts do not consider § 2255 motions while a direct appeal is pending. *Feldman v. Henman*, 815 F.2d 1318, 1320 (9th Cir. 1987) (as amended); *United*

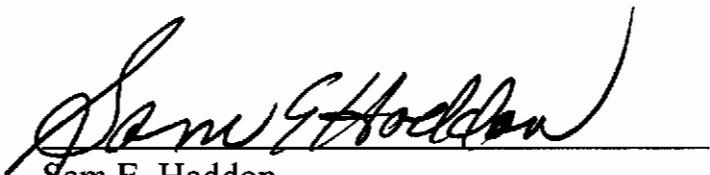
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CERTIFICATE OF APPEALABILITY / PAGE 1

States v. Deeb, 944 F.2d 545, 548 (9th Cir. 1991); Rule 5, Rules Governing Section 2255 Proceedings for the United States District Courts, advisory committee's note (quoting *Womack v. United States*, 395 F.2d 630, 631 (D.C. Cir. 1968)). This is well-settled law. A certificate of appealability is not warranted. *Lozada v. Deeds*, 498 U.S. 430, 432 (1991) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Accordingly, IT IS HEREBY ORDERED:

1. Iron Pipe-Begay's motion to vacate, set aside, or correct the sentence (doc. 67) is DISMISSED without prejudice to refiling on completion of the direct appeal process.
2. A certificate of appealability is DENIED.
3. The Clerk of Court shall enter a judgment of dismissal in Cause No. CV 12-75-GF-SEH.

DATED this 9th day of October, 2012.



Sam E. Haddon
United States District Court